

Amendment No. 1 to SB2458

Bailey
Signature of Sponsor

AMEND Senate Bill No. 2458*

House Bill No. 2661

by deleting all language after the enacting clause and substituting:

SECTION 1. Tennessee Code Annotated, Section 56-7-3206(c), is amended by deleting subdivision (3) and substituting:

(3)

(A) Subdivision (c)(1) does not apply to a covered entity or pharmacy benefits manager that establishes a clearly defined process through which a contracted pharmacy may contest that the reimbursement the pharmacy received for a prescription drug or device was less than the actual cost to that pharmacy for the prescription drug or device.

(B) If a pharmacy chooses to contest the actual cost the pharmacy incurred for a particular drug or medical product or device, then the pharmacy has the right to designate a pharmacy services administrative organization or other agent to file and handle its appeal of the actual cost.

SECTION 2. Tennessee Code Annotated, Section 56-7-3206(c), is amended by adding the following as new subdivisions:

(5) If a pharmacy or agent acting on behalf of a pharmacy prevails in an appeal provided for in this section, then the pharmacy benefits manager or covered entity shall reimburse the pharmacy at least the pharmacy's actual cost for the prescription drug or device and shall apply the findings from the appeal as to the rate of reimbursement and actual cost for the particular drug or medical product or device to other similarly situated

pharmacies to which the pharmacy benefits manager also applies the challenged rate of reimbursement or actual cost.

(6) It is a violation of this subsection (c) if, after an appeal in which a pharmacy or agent acting on behalf of a pharmacy prevails, a pharmacy benefits manager or covered entity fails to reimburse the pharmacy at least actual cost.

SECTION 3. Tennessee Code Annotated, Section 56-7-3206, is amended by deleting subsection (d) and substituting:

(d) A pharmacy benefits manager shall not include within the amount calculated to reimburse a pharmacy for actual cost pursuant to subsection (c) the amount of any professional dispensing fee that is payable to the pharmacy.

(e) A pharmacy benefits manager shall pay a professional dispensing fee at a rate that is not less than the amount paid by the TennCare program to a pharmacy, if:

(1) The pharmacy dispenses a prescription drug or device pursuant to an agreement with the pharmacy benefits manager or a covered entity; and

(2) The pharmacy's annual prescription volume is less than sixty-five thousand (65,000) prescriptions per year.

(f) As used in this section:

(1) "Actual cost" means the amount a pharmacy paid as evidenced by documentation that includes, but is not limited to, the invoice price minus discounts, price concessions, or other reductions; and

(2) "Allowed amount" means the cost of a prescription drug or device after applying pharmacy benefits manager or covered entity pricing discounts available at the time of the prescription claim transaction.

SECTION 4. Tennessee Code Annotated, Section 56-7-3102(1), is amended by deleting "self-insured entities, and" and substituting "self-insured entities, plans governed by the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. § 1001 et seq.), and".

SECTION 5. Tennessee Code Annotated, Section 56-7-3102(5), is amended by deleting "self-insured entities, and" and substituting "self-insured entities, plans governed by the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. § 1001 et seq.), and".

SECTION 6. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 7. This act takes effect upon becoming a law, the public welfare requiring it.